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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5630-N-01]

Rental Assistance Demonstration
Notice of Web Availability and Request for Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Rental Assistance Demonstration (RAD) provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by public housing agencies (PHAs) and owners to private debt and equity to address immediate and long-term capital needs. RAD is also designed to test the extent to which residents have increased housing choices after the conversion, and the overall impact on the subject properties. This notice announces that HUD has posted on its website a demonstration program notice (Program Notice) entitled “Rental Assistance Demonstration – Partial Implementation and Request for Comments.” Prior to the issuance of the final program notice that will provide for full implementation of RAD, HUD welcomes public comment on the entirety of the Program Notice and particularly seeks comments on elements highlighted in this notice.

DATES: Comment Due Date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

EFFECTIVE DATE: The conversion of Rent Supp and RAP properties under Section III of the Program Notice is effective on: **[Insert date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit comments on applicable parts of this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. All submissions and communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. Also, to expedite review of public comments, it is recommended commenters should organize their comments by specific topical areas and section numbers and label those areas accordingly.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202- 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please electronically direct requests for further information to this email address: rad@hud.gov. Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program, Department of Housing and Urban Development, 451 7th Street, SW, Room 2000; Washington, DC 20410.;

SUPPLEMENTARY INFORMATION:

This Federal Register notice announces the issuance of, and solicits public comment on, a Program Notice entitled, “Rental Assistance Demonstration – Partial Implementation and Request for Comments,” which is available on HUD’s website at www.hud.gov/rad. The Program Notice describes, in detail, the demonstration’s eligibility and selection criteria for participation, general requirements, instructions for applying for the conversion of assistance under RAD, and other relevant information about the demonstration. While HUD seeks public comment on all instructions and criteria provided in the Program Notice, the instructions and criteria applicable to the Section III of the Program Notice are effective upon issuance of the

Program Notice. Following receipt and consideration of public comment, a second notice (Final Notice) will be issued with final program instructions and eligibility and selection criteria, which may include revisions to the Section III instructions and criteria.

I. Background

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012, (Public Law 112-55, signed November 18, 2011) (2012 Appropriations Act) allows for the conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental Assistance (RAP), and Moderate Rehabilitation (Mod Rehab) programs (collectively, covered programs) to long-term, renewable assistance under Section 8. RAD has two separate components:

- **First Component.** The first component of RAD allows projects funded under the public housing and Mod Rehab programs to convert to long-term Section 8 rental assistance contracts. Under this component of RAD, which is covered under Sections I and II of the Program Notice, PHAs and Mod Rehab owners may apply to HUD to convert to one of two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No additional or incremental funds were authorized for this component of RAD. Therefore, PHAs and Mod Rehab owners will be required to convert assistance for projects at current subsidy levels. The 2012 Appropriations Act authorizes up to 60,000 units to convert assistance under this component, to be selected competitively. The 2012 Appropriations Act further specifies that HUD shall provide an opportunity for public comment on draft eligibility and selection criteria and on the procedures that will apply to the selection of properties that will participate in this component of

the demonstration. Accordingly, these provisions will become effective after HUD has considered all comments received on the Program Notice and publishes a final notice.

- **Second Component.** The second component of RAD, which is covered under Sections II and III of the Program Notice, allows owners of projects funded under the Rent Supp, RAP and Mod Rehab programs with a contract expiration or termination occurring after October 1, 2006, and no later than September 30, 2013, to convert tenant protection vouchers (TPVs) to PBVs. There is no cap on the number of units that may be converted under this component of RAD and no requirement for competitive selection. While these conversions are not subject to current funding levels for each project or a unit cap, they are subject to the availability of overall appropriated amounts for TPVs. These provisions are effective immediately; however, HUD is inviting comments on these provisions and may make changes based on its consideration of the comments. Any such changes will be announced in the Final Notice.

II. Issues Highlighted for Public Comment

HUD welcomes comments on all aspects of the demonstration. In particular, HUD is interested in receiving comments on the following components (the parenthetical references below are the relevant sections in the Program Notice posted at www.hud.gov/rad).

Selection Criteria (§§ 1.12, 2.3.9). HUD seeks to convert a wide range of projects under the demonstration. HUD has attempted to simplify both the submission requirements and selection procedures while encouraging the participation of a wide range of PHAs and owners in different markets and geographic areas. HUD is especially interested in encouraging PHAs and

owners to use the authority granted under RAD to address the backlog of capital needs of their properties. As a result, HUD is particularly interested in receiving comments on how well the proposed selection criteria encourage these objectives to be met.

Cap on Mod Rehab Project Conversions (§ 2.3.9(A)). Both public housing and Mod Rehab properties are eligible to compete for conversion under the 60,000 unit cap in the first component of the RAD authority. However, as 60,000 units represents approximately five percent of the total public housing inventory of 1.2 million units, and the current Mod Rehab inventory is about 25,000 units, HUD believes that it is reasonable to limit the number of Mod Rehab conversions under the first component of the RAD authority to approximately five percent of the Mod Rehab inventory, or approximately 1,250 units total. Imposing such a cap on Mod Rehab conversions under this component of the RAD authority should be mitigated by the fact that Mod Rehab properties are also eligible to convert TPVs to long-term Section 8 PBVs under the second component of the demonstration authority. HUD is interested in receiving comments on how the proposed cap on Mod Rehab properties might affect prospects for effective conversion of assistance for either or both Mod Rehab and public housing properties.

Contract Rents (§§ 1.7(B)(5), 1.8(A)(5), 2.3.5(B)(2), 2.3.6(A)(3)). As RAD projects are statutorily limited to converting existing subsidy levels to new, long-term Section 8 contracts, rents for the first component of the demonstration will be set relative to current subsidy levels and PBRA and PBV program caps. Although rents levels are statutorily limited, HUD is interested in receiving comments on how policies on contract rent setting might best facilitate PHAs and owners in accessing needed capital and securing firm financing plans as discussed below.

Conversion Contingent upon Firm Financing Plan (§§ 1.13, 2.3.10). HUD is proposing a two-step process in converting assistance requiring assembly of needed financing relative to an initial commitment from HUD and then, upon approval of a firm financing plan by HUD, issuance of a Section 8 HAP contract. HUD believes that the two-step process minimizes the barriers to submitting an application and ensures that only projects that are financially viable execute a final HAP and permanently convert their form of assistance under RAD. HUD is particularly interested in receiving comments on the associated timeframes and milestones outlined in the Program Notice.

Resident Notification and Consultation. Under both components of the demonstration, PHAs and owners are required to notify and consult with tenants about their intent to apply for conversion, provide tenants the opportunity to comment on the proposed conversion, and respond to or address comments received. These and other requirements are designed to: (1) protect tenants and ensure that they are able to meaningfully participate in the conversion process; and (2) appropriately balance the goals of preserving these properties and maximizing residents' housing choices. HUD invites comments on whether the notice effectively achieves these objectives.

Rent Adjustments. Converted projects under the first component of the demonstration will have contract rents adjusted annually only by HUD's Operating Cost Adjustment Factor (OCAF). As a result, PHAs and Mod Rehab owners that are considering applying for participation under the first component of the demonstration must be reasonably confident that existing funding committed to the project is sufficient to meet project operating expenses and contingencies for the term of the initial contract. In addition to offering annual OCAF adjustments, HUD is interested in receiving comments on other actions it might facilitate that

can best assure high-quality management and maintenance of properties that convert assistance under RAD.

Addressing Capital Needs and Encouraging Preservation (§§ 1.5, 2.3.3). Many public housing and Mod Rehab properties require substantial private debt and/or equity capital to address their capital repair needs and preserve their assets over time. Other projects may not require additional financing but instead need to capitalize a replacement reserve account matched to a property's anticipated capital needs to ensure long-term viability. The demonstration allows for both types of projects, but favors projects with higher capital needs given the goal of testing conversion as a strategy for providing access to private debt and equity to address the backlog of capital needs. The demonstration also includes a ranking factor to encourage PHAs and owners to employ green building rehabilitation and operation techniques on converted properties. HUD is interested in receiving comments on how well the proposed rehabilitation-related ranking factors encourage these objectives.

Public Housing Mixed-Finance Projects (§§ 1.5, 1.10.3, 1.12(B)). While a central premise of the demonstration is that Section 8 provides a more stable platform for public housing, and HUD is aware that the existing Mixed-Finance inventory could benefit from converting assistance to Section 8 contracts, HUD believes the public housing properties that have not benefited from the Mixed Finance program should have greater access to RAD's limited authority. Accordingly, HUD will limit eligibility to Mixed-Finance projects with a Date of Full Availability prior to July 1, 2002, and reserves the right to limit the number of awards made to eligible Mixed-Finance projects. HUD is particularly interested in receiving comments on criteria that HUD might employ in attempting to reasonably limit the number of Mixed-

Finance transactions to those most consistent with the demonstration's primary purpose of enabling PHAs to access needed financing to address their capital repair needs.

Waivers (§§ 1.6, 2.3.5, 2.3.6, 3.5). To carry out the goals of the demonstration, the 2012 Appropriations Act provides HUD with statutory and regulatory waiver authority. Rather than allow each PHA, Mod Rehab, Rent Supp or RAP owner to request specific waivers that would be extraordinarily difficult to administer on an individualized basis, HUD lists in each section of the Program Notice related to public housing, Mod Rehab, Rent Supp and RAP the waivers that are applicable to the specific type of conversions being undertaken. HUD invites comments on the range of waivers proposed to be offered and the need, if any, for additional waivers to facilitate successful RAD conversions by property type.

No Partial Project Conversions. For administrative reasons, HUD will accept applications only for complete project conversions (excluding de minimis unit reductions as defined in Section I of the Program Notice). For example, if a PHA has a 200-unit project that consists of 100 family units and 100 elderly units on separate sites, and wants only to convert only the family units, the PHA would first need to seek approval from HUD independent and in advance of a RAD application to divide the project into two different projects. Procedures for changing project groupings can be found in PIH Notice 2007-28 (which is available for download at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips). HUD is particularly interested in receiving comments on any potential unintended consequences of this policy.

Choice-Mobility (§§ 1.8.12, 1.12(D)(2), 2.3.6.8, 2.3.9(C)(2)). HUD's goal is to provide all residents of converted projects under both the first and second components of the

demonstration with viable options to obtain a Housing Choice Voucher and move from a converted property as they deem in their best interests, i.e., to offer them choice and mobility after a reasonable tenure. For projects converting assistance to PBVs, existing PBV choice requirements specified under section 8(o)(13)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)(E)) will apply. For projects converting assistance to PBRA, choice-mobility options will be required to be made available consistent with Sections 1.8.12 and 2.3.6.8. HUD will further offer ranking factor points to encourage applicants to form partnerships to secure the needed turnover vouchers necessary to support the choice-mobility requirement where none is readily available. HUD is particularly interested in receiving comments on how the indicated choice-mobility objectives can best be achieved in the demonstration through the indicated ranking factors or other actions that it might facilitate.

Demonstration Design. HUD will be evaluating the demonstration based on the goals detailed in the notice. In that context, HUD solicits public comments on the parameters of the current design and how it serves those goals. For example, the demonstration creates two fairly distinct program options that PHAs can choose from under the first component of RAD: PBRA or PBVs. HUD is interested in the reasons why a PHA may choose to convert public housing units to PBRA rather than PBVs or vice versa. HUD seeks feedback on whether there are additional modifications to the design to maximize the opportunity for learning and the long-term viability of converted properties.

III. Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for

public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Dated: March 5, 2012

Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

Carol J. Galante, Acting Assistant Secretary
for Housing—Federal Housing Commissioner

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